

From: [Arnold, Adam C.](#)
To: [Yacovone, Krista](#)
Cc: [Hatfield, William S.](#)
Subject: RE: Jan 2016 104(e) Follow up
Date: Friday, June 03, 2016 3:08:32 PM
Attachments: [removed.txt](#)
[logo.jpg](#)
[SKMBT_75416060314560.pdf](#)

Krista:

See attached. I believe this is what you are looking for. Please let us know if you require any additional information. Thank you.

Regards,

Adam

Adam C. Arnold, Esq.
Gibbons P.C.
One Gateway Center
Newark, NJ 07102
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aarnold@gibbonslaw.com

From: Yacovone, Krista [<mailto:yacovone.krista@epa.gov>]
Sent: Thursday, June 02, 2016 5:34 PM
To: Arnold, Adam C.
Cc: Hatfield, William S.
Subject: RE: Jan 2016 104(e) Follow up

Bill and Adam,

Just took a look at the document and realized this is not the one that I need. I have a full copy of the 1989 ACO between GAF and NJDEP regarding cleanup activities, but do not have a copy of the ACO between GAF and NJDEP regarding GAF's effluent discharges to the Arthur Kill. The version I have is undated, but it appears to be from sometime between 1986 and 1991.

Apologies for the confusion and inconvenience.

Thank you,

Krista

From: Yacovone, Krista
Sent: Thursday, June 02, 2016 3:44 PM
To: 'Arnold, Adam C.' <AArnold@gibbonslaw.com>
Cc: Hatfield, William S. <WHatfield@gibbonslaw.com>
Subject: RE: Jan 2016 104(e) Follow up
Thank you.

From: Arnold, Adam C. [<mailto:AArnold@gibbonslaw.com>]
Sent: Thursday, June 02, 2016 10:22 AM
To: Yacovone, Krista <yacovone.krista@epa.gov>
Cc: Hatfield, William S. <WHatfield@gibbonslaw.com>
Subject: Jan 2016 104(e) Follow up

Krista:

Following up on your call with Bill Hatfield yesterday, please find attached a complete copy of the 1989 ACO between GAF and NJDEP. Please let us know if you require anything further. Thank you.

Regards,

Adam C. Arnold, Esq.

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State of New Jersey
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF WATER RESOURCES
 CN 029

Jorge H. Berkowitz, Ph.D.
 Acting Director

Trenton, N.J. 08625-0029

(609) 292-1637
 Fax # (609) 984-7935

IN THE MATTER OF	:	ADMINISTRATIVE
GAF CHEMICALS CORPORATION	:	CONSENT
LINDEN\UNION COUNTY	:	ORDER

This Administrative Consent Order is entered into pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection (hereinafter "NJDEP" or "Department") by N.J.S.A. 13:1D-1 et seq., and the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and duly delegated to the Assistant Director of the Division of Water Resources (DWR) pursuant to N.J.S.A. 13:1B-4.

FINDINGS

1. GAF Chemicals Corporation (hereinafter "GAF") operates a facility (hereinafter "facility") located on DuPont Road, Block 587, Lot 1, Linden, Union County, New Jersey.
2. On December 30, 1985, NJDEP issued to GAF NJPDES Permit No. NJ00000019 (hereinafter "the Permit") effective February 1, 1986 and scheduled to expire January 31, 1991. The Permit authorized the discharge of pollutants from the facility to the Arthur Kill, a surface water of the State.
3. By letter dated February 6, 1986, the Department modified the effective date of the Permit to March 1, 1986.
4. Part IV, Pages 14 - 15 of the Permit requires that the discharge from Discharge 001 meet a limitation of no less than an LC50 of 20% (by volume) beginning February 1, 1988, and no less than an LC50 of 50% (by volume) beginning August 1, 1989 for Acute Toxicity.
5. A review of Acute Toxicity test reports submitted to the Department by GAF revealed that results at Discharge 001 for the following tests did not

meet the minimum limitation of LC50 \geq 20% percent (by volume) in violation of the Permit:

Bioassay		
Test Date	Permit Limitation	Test Results
12\88	LC50 \geq 20% (by volume)	LC50 - 3.9% effluent
1\89	LC50 \geq 20% (by volume)	LC50 - 1.0% effluent
2\89	LC50 \geq 20% (by volume)	LC50 - 2.9% effluent
3\89	LC50 \geq 20% (by volume)	LC50 - 1.3% effluent

LC50 - Concentration of effluent resulting in 50% mortality of organisms tested.

6. GAF has informed the Department that it will require a period of one (1) year and eleven (11) months from April 1, 1989 to meet the final effluent limitations for Acute Toxicity set forth in the Permit.

7. Based upon these findings, the Department has determined that GAF has violated the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., specifically N.J.S.A. 58:10A-6, and the regulations promulgated pursuant thereto, N.J.A.C. 7:14A-1 et seq., specifically N.J.A.C. 7:14A-1.2(c).

8. Based upon the information available to the parties on the effective date of this Administrative Consent Order and to amicably resolve the above matter, the Department and GAF enter into this Administrative Consent Order without trial or adjudication of any of the facts or issues contained herein.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED AND AGREED THAT:

I. Enforcement Compliance Schedule

9. GAF shall meet the final effluent limitation for Acute Toxicity at Discharge 001 set forth in Part IV, Pages 14 - 15 of the Permit by March 4, 1991. GAF shall achieve compliance in accordance with the following schedule:

	STARTING DATE	COMPLETION DATE
Design:	April 1, 1989	July 10, 1989

Permitting Process:	June 5, 1989	October 23, 1989
Purchasing:	August 28, 1989	June 4, 1990
Construction and Start-up:	February 5, 1990	March 4, 1991

II. Progress Reports

10. GAF shall submit to the Department quarterly progress reports; the quarters being January through March, April through June, July through September, and October through December of each calendar year. Each progress report shall be submitted on or before the 30th day of the month following the quarter being reported. GAF shall submit the first progress report to the Department by July 31, 1989, for the second 1989 quarter. Each progress report shall detail the status of GAF's compliance with this Administrative Consent Order and shall include the following:

- a. Identification of site and reference to this Administrative Consent Order;
- b. Status of work at the site and progress to date;
- c. Difficulties or problems encountered during the reporting period;
- d. Actions taken or to be taken to rectify difficulties or problems;
- e. Activities planned for the next reporting period;
- f. A discussion of performance evaluation of all corrective remedial measures implemented to date.

III. Penalties

11. Within thirty (30) calendar days after the effective date of this Administrative Consent Order, GAF shall submit a cashier's or certified check in the amount of \$308,000 payable to "Treasurer, State of New Jersey", in settlement of violations noted in the FINDINGS section above to the address given in Paragraph 16 of this Administrative Consent Order.

12. GAF shall pay stipulated penalties to the Department for its failure to comply with the provisions of this Administrative Consent Order according to the following schedule, unless the Department has notified GAF in writing of modifications pursuant to the force majeure provisions hereinbelow:

For schedule violations:

Calendar Days After Due Date

1 - 7	\$ 1000 per calendar day
8 - 14	2000 per calendar day
15 or more	5000 per calendar day

Within fourteen (14) calendar days after receipt of a written demand from the Department, GAF shall submit a cashier's or certified check payable to "Treasurer, State of New Jersey" in the amount of stipulated penalties demanded by the Department. Payment shall be submitted to the address given in Paragraph 16 of this Administrative Consent Order.

13. If GAF fails to pay stipulated penalties pursuant to the preceding paragraph, the Department may institute civil proceedings to collect such penalties or assess civil administrative penalties for violations of this Administrative Consent Order or take any other appropriate enforcement action.

IV. Force Majeure

14. If any event occurs which GAF believes will or may cause delay in the achievement of any provision of this Administrative Consent Order, GAF shall notify the Department in writing within seven (7) calendar days of the delay or anticipated delay, as appropriate, referencing this paragraph and describing the anticipated length of the delay, the precise cause of the delay, any measures taken or to be taken to minimize the delay, and the time required to take any such measures to minimize the delay. GAF shall take all necessary action to prevent or minimize any such delay.

15. If the Department finds that: (a) GAF has complied with the notice requirements of the preceding paragraph and; (b) that any delay or anticipated delay has been or will be caused by fire, flood, riot, strike, or any other circumstances beyond the control of GAF, the Department shall extend the time for performance hereunder for a period no longer than the delay resulting from such circumstances. If the Department determines that either GAF has not complied with the notice requirements of this paragraph or the event causing the delay is not beyond the control of GAF, failure to comply with the provisions of this Administrative Consent Order shall constitute a breach of the requirements of this Administrative Consent Order. The burden of proving that any delay is caused by circumstances beyond the control of GAF and the length of delay attributable to those circumstances shall rest with GAF. Increases in the cost or expenses incurred by GAF in fulfilling the requirements of this Administrative Consent Order shall not be a basis for an extension of time. Delay in an interim requirement shall not automatically justify or excuse delay in the attainment of subsequent requirements.

V. General Provisions

16. GAF shall submit all documents required by this Administrative Consent Order by certified mail, return receipt requested, or by hand delivery with an acknowledgement of receipt form for the Department's signature to:

Mr. Peter T. Lynch, Chief
Metro Bureau of Regional Enforcement
NJDEP - Division of Water Resources
2 Babcock Place
West Orange, NJ 07052

17. GAF shall submit copies of any document required by this Administrative Consent Order to:

Dr. Richard A. Baker, Chief
Permits Administration Branch
Planning and Management Division
USEPA - Region II
26 Federal Plaza
New York, NY 10278

18. All provisions of the Permit shall remain in full force and effect and are not modified by this Administrative Consent Order. The enforcement compliance schedule set forth above in Paragraph 9 of this Administrative Consent Order is an enforcement compliance requirement that GAF shall meet while working to meet the effluent limitations in the Permit. The enforcement compliance requirements of this Administrative Consent Order do not modify any provisions of the Permit or any of the duties or liabilities of GAF thereunder.

19. Nothing in this Administrative Consent Order shall preclude the Department from taking enforcement action against GAF for matters not set forth in the FINDINGS section of this Administrative Consent Order.

20. This Administrative Consent Order shall be binding on GAF, its successors, assigns, and any trustee in bankruptcy or receiver appointed pursuant to a proceeding in law or equity.

21. GAF shall perform all work conducted pursuant to this Administrative Consent Order in accordance with prevailing professional standards.

22. This Administrative Consent Order shall not relieve GAF from obtaining and complying with all applicable federal, state, and local permits, as well as applicable statutes and regulations while carrying out the obligations imposed by this Administrative Consent Order.

23. This Administrative Consent Order shall not preclude the Department from requiring that GAF apply for any permit or permit modifications issued by the Department under the authority of the Water Pollution Control Act

N.J.S.A. 58:10A-1 et seq., and/or any statutory authority for the matters covered herein. The terms and conditions of any such permit shall not be preempted by the terms and conditions of this Administrative Consent Order even if the terms and conditions of any such permit are more stringent than the terms and conditions of this Administrative Consent Order except with respect to the Acute Toxicity Bioassay limitation in any NJPDES Permit issued during the period from the effective date of this Administrative Consent Order to March 4, 1991.

24. All appendices referenced in this Administrative Consent Order, and all reports, work plans, and documents required under the terms of this Administrative Consent Order are, upon approval by the Department, incorporated into this Administrative Consent Order by reference and made a part hereof.

25. Obligations and penalties of this Administrative Consent Order are imposed pursuant to the police powers of the State of New Jersey for the enforcement of law and protection of the public health, safety and welfare and are not intended to constitute debt or debts which may be limited or discharged in a bankruptcy proceeding.

26. In addition to the Department's statutory and regulatory rights to enter and inspect, GAF shall allow the Department and its authorized representatives access to the facility at all times for the purpose of monitoring GAF's compliance with this Administrative Consent Order. Department personnel shall comply with all health and safety requirements applicable to GAF employees.

27. The Department reserves the right to require GAF to take additional actions should the Department determine that such actions are necessary to protect human health or the environment. Nothing in this Administrative Consent Order shall constitute a waiver of any statutory right of the Department to require GAF to undertake such additional measures should the Department determine that such measures are necessary.

28. GAF shall not construe any informal advice, guidance, suggestions, or comments by the Department or by any persons acting on behalf of the Department, as relieving GAF of its obligations to obtain written approvals as may be required herein unless such advice, guidance, suggestions, or comments by the Department shall be submitted in writing to GAF.

29. GAF hereby consents to and agrees to comply with this Administrative Consent Order which shall be fully enforceable as an Order in the New Jersey Superior Court upon the filing of a summary action for compliance pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

30. GAF hereby agrees not to contest the authority or jurisdiction of the Department to issue this Administrative Consent Order and also agrees not to contest the terms and conditions of this Administrative Consent Order in any action to enforce its provisions.

31. GAF shall give written notice of this Administrative Consent Order to any successor in interest prior to transfer of ownership of the facilities which are the subject of this Administrative Consent Order, and shall simultaneously verify to the Department that such notice has been given.

32. This Administrative Consent Order shall terminate upon receipt by GAF of written notice from the Department that GAF has demonstrated, to the satisfaction of the Department, that all the terms of this Administrative Consent Order have been completed.

33. Hearing Waiver. When this Administrative Consent Order becomes effective, GAF waives its rights to a hearing on the matters contained hereinabove pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 58:10A-1 et seq.

34. No modification or waiver of this Administrative Consent Order shall be valid except by written amendment duly executed by GAF and the Department, or by the Department's modification in writing of any of the provisions pursuant to the force majeure provisions hereinabove.

35. This Administrative Consent Order shall take effect upon execution hereof by all parties; provided, however, that this Administrative Consent Order shall be null and void unless the Department receives the fully executed original within seven (7) calendar days of the Department's execution hereof.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY AUTHORITY OF
JORGE H. BERKOWITZ, Ph.D.
ACTING DIRECTOR
DIVISION OF WATER RESOURCES

DATE: MAY 30 1989

BY: [Signature]
JAMES K. HAMILTON
ASSISTANT DIRECTOR
ENFORCEMENT ELEMENT

GAF CHEMICALS CORPORATION

DATE: [Signature]

BY: [Signature]

NAME: [Signature]

TITLE: [Signature]